

May 3, 2006 BZA



REQUEST ANALYSIS  
AND  
RECOMMENDATION

06AR0264

Lance Mortimer

Matoaca Magisterial District  
20827 Chesterfield Avenue

REQUEST: Requests renewal of Special Exception 03AN0230 to permit the keeping of nine (9) dogs in a Neighborhood Business (C-2) District.

RECOMMENDATION

Recommend denial of this Special Exception for the following reasons:

- A. The proposed use may be likely to have an adverse effect on the health, safety or welfare of persons residing on the premises or in the area.
- B. The keeping of nine (9) dogs is incompatible with the permitted uses in this Neighborhood Business (C-2) District.
- C. There are no conditions that will be adequate to address the negative impacts that keeping nine (9) dogs on the property will have on the area in general.

GENERAL INFORMATION

Location:

Property is known as 20827 Chesterfield Avenue. Tax ID 795-612-1149 (Sheet 45).

Existing Zoning:

C-2

Size:

.312 acre

Existing Land Use:

Residential

Adjacent Zoning and Land Use:

North - C-2; Residential  
South - C-2; Commercial  
East - C-2; Commercial  
West - C-5; Commercial

Utilities:

Public water and sewer

General Plan:

(Ettrick Village Plan)

Community Mixed Use

DISCUSSION

The applicant requests renewal of Special Exception 03AN0230 to permit the keeping of nine (9) dogs in a (C-2) community mixed use.

The applicant provides the following justification in support of this request:

We own a male and female pug. The female pug had puppies. We also have two (2) dogs that belong to our youngest daughter and a stray we have taken in because we could not find a good home for her. We have nine adult dogs. The adult dogs have been spayed or neutered. These dogs are all well cared for and loved. We are requesting this Special Exception for the life of the dogs (Please see attachments).

On April 2, 2003, the Board of Zoning Appeals approved a Special Exception to permit the applicant to keep nine (9) dogs in a Neighborhood Business (C-2) District. A copy of the minutes of the April 2, 2003, Board meeting is attached.

Planning Department staff originally visited the site in 2003 in response to a complaint. However, over the past three (3) years, staff has not received any complaints relative to the property owner's 2003 Special Exception. The applicant has indicated that he would like to change the time limit for the Special Exception to be for the life of the dogs. Staff believes the previously approved conditions have helped to lessen the adverse impacts that this use may have on the neighborhood and

the area in general, however, staff recommends a five (5) year time limit be imposed due to the unusually high number of dogs.

Staff's field inspection revealed a single family dwelling on the subject property located on a corner lot at Chesterfield Avenue and Granger Street. Cavalier Athletic Club is located to the south of the subject property. The property to the north is unimproved. A single family dwelling is adjacent to the east of the subject property. A three (3) foot chain link fence is located around the perimeter of the property with a wooden six (6) foot fence located to the left and rear portion of the property behind the dwelling.

The subject property is located in an area zoned Neighborhood Business (C-2). The single family dwelling on the subject property is being used as a residence.

Keeping this unusually high number of dogs is similar in character to a commercial kennel. Commercial kennels are first permitted in Community Business (C-3) District. This proposed use is not compatible with uses that are permitted in Neighborhood Business (C-2) Districts which is intended to permit neighborhood oriented retail services.

This type of request may have an adverse affect on the character of the area and may adversely affect the welfare of the persons residing or working in the area because the noise produced by nine (9) dogs may create a nuisance.

Staff believes that imposing conditions will not mitigate the negative impact that this use may have on this area. Although the yard is adequately maintained and the dogs are confined within a fence in the rear yard, the number of dogs may be a nuisance to adjacent and area properties. Therefore, staff cannot support this request.

However, if the Board feels that this request has merit, staff recommends that it be subject to the following conditions:

#### CONDITIONS

1. Special Exception shall be granted to and for Lance Mortimer, exclusively, and shall not be transferable nor run with the land.
2. Special Exception shall be granted for a period not to exceed five (5) years from date of approval and may be renewed upon satisfactory reapplication and demonstration that the keeping of these nine (9) dogs has not proved a detriment to the adjacent property or the area in general.
3. All dogs shall be confined to the existing dwelling. Whenever the animals are allowed outside the dwelling, they shall be on a leash or within the fence in the rear yard.
4. Should any one (1) of the dogs be given, sold or pass away, it shall not be replaced.

5. The applicant shall not breed or board dogs on this property.
6. The applicant shall provide a history of each dog, such as age, sex, color and size as well as a photo to the Planning Department within thirty (30) days of approval of the Special Exception.

Our oldest daughter lives with us because she is mentally challenged and not really able to care for her self. She loves all animals and want to make all of them part of our family. She takes care of our dogs, feeds them, plays with them, lets them outside to do their business, cleans up after them, and loves them all. She has taken care of them since they were puppies. Caring for our dogs is like therapy for her. She knows she has certain things to do so the dogs stay healthy and happy. The dogs are pretty much her life. Without the dogs all she would do is watch cartoons and sleep. We have tried several different programs and organizations to help her but nothing has worked so far. She feels more comfortable with her dogs then with people. She has never had the urge to go on a date or the desire to live by herself.

The dogs are never left home alone there is always someone with them, either a family member or a dog sitter.

The dog's shots are kept up to date, they see a vet whenever they need to and we have Orkin spray for fleas once a month.

Seven of the dogs are small breed and two are medium size. The dogs are all inside dogs and go outside just long enough to do their business and then come right back inside.

There are no houses adjacent to where we live. On one side is our landlords antique shop. In back a vacant lot owned by our landlord. In front a road with vacant state owned property on the other side. On the other side another road with more vacant state owned property on the other side of it.

Rosco was born in June 1992 and belongs to our youngest daughter. She got him the first time she was married. She got divorced and moved home with the puppy. Rosco is a chow. He is the protector of the family. When Rosco wants attention he lets you know, which isn't often. He has had both knees operated on and is not allowed to have too much activity. He has been neutered.

Freckles is a medium size mixed breed dog found by our youngest daughter's second husband in 1995. She was a puppy 10 or 12 weeks old. Our daughter brought her to us to care for. Our oldest daughter did most of the caring and feeding. Freckles is scared of most things and does not like something new being brought into the house. She has been spayed.

BuBu is a Boston Terrier our youngest daughter bought in 1997. She has been spayed. Both our daughter and her husband worked so she brought Rosco and BuBu to our house every day while they were working.

In 1996 our youngest daughter gave my wife a pug for mothers day. My wife carries Gizmo everywhere she goes and she is a constant companion to my wife. Gizmo does not like it when my wife leaves her.

In 2001 we bought another pug Spike. The first time my wife held him they formed an immediate bond. Spike was mated with Gizmo and she had a litter in Sept. Gizmo was spayed after she finished nursing the puppies and Spike was neutered Feb 6.

Our youngest daughter got married for the third time. When they came back from their honeymoon they brought a shar pei. We had to make an emergency trip to New York State and our youngest daughter and her husband stayed at our house to help take care of our mentally challenged daughter. The shar pei and chow got into a fight. So our daughter could not take the chow back.

The only way Gizmo would nurse her puppies was if someone sat with her. Our oldest daughter was the one that sat with her most of the time so she formed a bond with the puppies and she cares for and loves each one.

Our oldest daughter has cared for every one of these dogs, except the shar pei, since they were puppies even our youngest daughter's dogs because she worked two jobs.



Chesterfield County, Virginia  
Board of Zoning Appeals  
April 2, 2003

**PRESENT:**

Mr. Joseph L. Biggs, Chairman  
Mr. W. Baxter Perkinson, Sr., Vice-Chairman  
Mr. John E. Caperton  
Mr. Graham C. Daniels  
Mr. H. Stephen Moore, Jr.

**ALSO PRESENT:**

Mr. J. Michael Janosik, Secretary to the  
Board of Zoning Appeals, Zoning Administrator,  
Planning Department  
Ms. Donna McClurg, Planner,  
Planning Department  
Ms. Linda N. Lewis, Administrative Secretary,  
Administration Branch, Planning Department  
Ms. Nancy Lipscomb, Assistant Deputy Clerk,  
Administration Branch, Planning Department  
Ms. Lola R. Rodriguez, Assistant County Attorney,  
County Attorney's Office

At approximately 11:15 a. m., Messrs. Biggs, Perkinson, Caperton, Daniels, Moore and staff met at Ledo Pizza (7052 Commons Plaza) for lunch and a work session. During lunch, there was discussion pertaining to the cases being heard at the Board of Zoning Appeals meeting.

At approximately 1:00 p. m., Mr. Biggs, Chairman, called the meeting to order in the Public Meeting Room, Chesterfield County Administration Building.

The invocation was given by Mr. Perkinson.

The Board considered the minutes of the March 5, 2003, Board of Zoning Appeals public hearing.

On motion of Mr. Daniels, seconded by Mr. Caperton, the Board approved the minutes of the March 5, 2003, Board of Zoning Appeals public hearing, as written.

***Providing a FIRST CHOICE Community Through Excellence in Public Service.***

**03AN0230:** In Matoaca Magisterial District, **LANCE MORTIMER** requested a Special Exception to permit the keeping of nine (9) dogs in a neighborhood business (C-2) district and amendment of zoning district map. The density of such amendment will be controlled by zoning conditions or Ordinance standards. The Comprehensive Plan suggests the property is appropriate for community commercial use. This property is known as 20827 Chesterfield Avenue. Tax ID 795-612-1149 (Sheet 45).

Ms. McClurg gave the background information and staff's recommendation for denial of Case 03AN0230 and stated, however, if the Board felt that this request had merit, it be granted subject to the conditions recommended by staff.

Mr. Lance Mortimer, the applicant, did not accept staff's recommendation for denial, but stated that if the Board were to grant his request, the conditions as outlined in the staff report were acceptable. He explained having nine (9) dogs was therapeutic for his daughter who was mentally challenged and not able to care for herself. He added the dogs were confined within a fence in the rear yard, the yard was adequately maintained and he did not feel the dogs impaired the character of or adversely impacted the value of buildings or property in the surrounding areas.

Mr. William W. Hawkins, the applicant's landlord, supported the request.

There was no opposition present.

Mr. Perkinson indicated he had visited the property on several occasions and had yet to see any of the dogs outside. He stated the property was well maintained and neat in appearance, and he felt approval of the request was appropriate.

On motion of Mr. Perkinson, seconded by Mr. Daniels, the Board resolved to approve the request for a Special Exception to permit the keeping of nine (9) dogs in a Neighborhood Business (C-2) District for Case 03AN0230, subject to the following conditions:

#### CONDITIONS

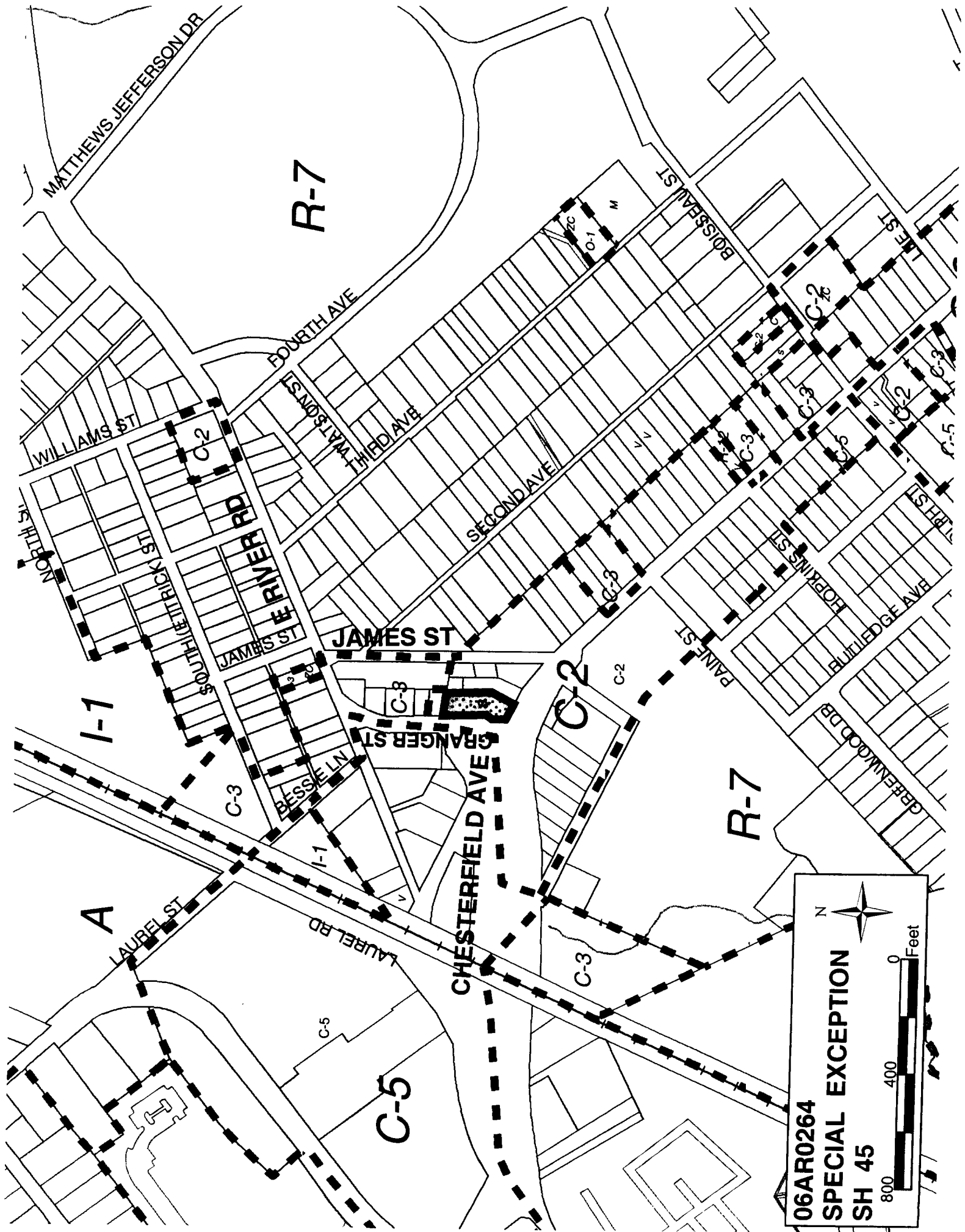
1. Special Exception shall be granted to and for Lance Mortimer, exclusively, and shall not be transferable nor run with the land.
2. Special Exception shall be granted for a period not to exceed three (3) years from date of approval and may be renewed upon satisfactory reapplication and demonstration that the keeping of these nine (9) dogs has not proved a detriment to the adjacent property or the area in general.
3. All dogs shall be confined to the existing dwelling. Whenever the animals are allowed outside the dwelling, they shall be on a leash or within the fence in the rear



yard.

4. Should any one (1) of the dogs be given, sold or pass away, it shall not be replaced.
5. The applicant shall not breed or board dogs on this property.
6. The applicant shall provide a history of each dog, such as age, sex, color and size as well as a photo to the Planning Department within thirty (30) days of approval of the Special Exception.

AYES: Messrs. Biggs, Perkinson, Caperton, Daniels and Moore.



06AR0264  
SPECIAL EXCEPTION  
SH 45

800 400 0 Feet

